

Court of Appeals, State of Michigan

ORDER

Hartman & Eichhorn Bldg Co Inc v Steven Dailey

Docket No. 249847

LC No. 2001-032203-CK

Bill Schuette
Presiding Judge

David H. Sawyer

Peter D. O'Connell
Judges

The Court orders that the motions to file amicus curiae briefs are GRANTED. The briefs received with the motions are accepted for filing.

The Court orders that the motion for reconsideration is DENIED. Judges Schuette and Sawyer, while voting to DENY the motion for reconsideration, agree that the Michigan Consumer Protection Act (MCPA) does not apply to building contractors and that the resolution of this issue is best determined on appeal to the Michigan Supreme Court or by a case that was not subject to a conflict panel pursuant to MCR 7.215.

O'Connell, J. would GRANT the motion for reconsideration and states:

I respectfully dissent.¹ This case is before us on third-party defendant Jeffrey R. Hartman's motion for reconsideration. The central issue to be resolved on the motion for reconsideration is whether the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et. seq.*, applies to residential builders and alteration contractors.² All three panel members, Judge Schuette, Judge Sawyer, and Judge O'Connell, agree that the MCPA does not apply to residential builders or alteration contractors. Therefore, in my opinion, logic dictates that the motion for reconsideration should be granted. However, two votes are required to grant the motion and, inexplicably, there exists only one vote to grant the motion. I believe it would be a waste of judicial resources to deny this motion for reconsideration because any recovery below based on MCPA grounds will undoubtedly face another more successful challenge in this Court.

On reconsideration and in light of our Court's collective finding that deviation from our holding in *Forton v Laszar*, 239 Mich App 711, 715; 609 NW2d 850 (2000), is not outcome-determinative, I would find, for the reasons stated in our original opinion, that the MCPA does not apply to residential builders or alteration contractors, including third-party defendant Jeffrey R. Hartman. I would modify our prior opinion to conclude that the MCPA does not apply to builders or alteration contractors.

¹ In our prior opinion, *Hartman & Eichhorn Bldg Co Inc v Dailey*, ___ Mich App ___; ___ NW2d ___ (2005), we held that there existed a conflict between our conclusion that the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et. seq.*, does not apply to residential builders and *Forton v Laszar*, 239 Mich App 711, 715; 609 NW2d 850 (2000), which held that the MCPA does apply to residential builders. But for *Forton* we would have concluded that the MCPA does not apply to residential builders. However, on June 22, 2005, this Court issued an order that determined that a special panel should not be convened pursuant to MCR 7.215(J) to resolve the conflict between this case and *Forton* for the reason that the conflict is not outcome-determinative. MCR 7.215(J)(3)(a).

² The order issued June 22, 2005, reads as follows:

The Court orders that a special panel shall not be convened pursuant to MCR 7.215(J) to resolve the conflict between this case and *Forton v Laszar*, 239 Mich App 711; 609 NW2d 850 (2000), lv den 463 Mich 969 (2001), for the reason that the conflict is not outcome-determinative. MCR 7.215(J)(3)(a).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 13 2005

Date

Sandra Schultz Mengel
Chief Clerk